1763.

SUPREME COURT OF THE UNITED STATES.

No. 84.

THE UNITED STATES, APPELLANT,

VERSUS

EUSEBIO M. GOMEZ.

APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

INDEX.

	Original.	Print.
Petition for confirmation,	1	1
Answer of United States attorney,	3	2
Exhibit A, annexed to said petition,	8	4
Replication of claimant,	9	5
Evidence of claimant,	11	5
Memorial of Gomez to Spanish Government for grant,	11	5
Grant to Gomez for 12,000 acres of land,	12	6
Decree of confirmation,	13	6
Appeal to Supreme Court,	15	7
Revival of appeal,	16	7
Citation of appeal, and return,	17	8

Before the honorable the Judge of the Superior Court for the Eastern District of Florida, and specially authorized by law to receive and adjudicate claims and titles to land in the District of East Florida.

Be it remembered, That, on the twenty first day of May, in the year of our Lord one thousand eight hundred and twenty nine, Eusebio M. Gomez, by John Lee Williams, his attorney, brought and filed in the clerk's office of the Superior Court for the Eastern District of Florida his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

Petition for confirmation.

To the Honorable Joseph L. Smith, Judge of the Superior Court of the Eastern District of Florida.

The petition of Eusebio M. Gomez, respectfully shows:

That he claims twelve thousand acres of land on Jupiter island, extending between Indian river and the sea, in front of the river St. Lucia, and within the jurisdiction of this court, which has not been surveyed. The grant to said land was made to Don Eusebio M. Gomez, by Governor Estrada, on the sixteenth day of July, in the year of our Lord one thousand,

eight hundred and fifteen, on account of various services of the grantee in several civil and military capacities designated in the memorial, and recognized by the Spanish Governor aforesaid, as will be seen by the documents herewith exhibited.

And your petitioner further shows that this claim has been presented to the Board of Land Commissioners appointed to settle the titles to lands in East Florida, under the act of Congress made the eighth day of May, in the year of our Lord one thousand eight hundred and twenty-two; but their decision thereon he has not learned. The said claim is embraced in the treaty made between the United States and the King of Spain on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, is neither ante-dated or forged, nor has it been barred by any legal decision.

Your petitioner, therefore, prays that the validity of his title may be inquired into by this honorable court; that a copy of this petition, with a citation, be served on Thomas Douglass, esquire, the attorney for the United States in said district, and the United States be made a party thereto; and, on a final hearing, he prays that a decree may be entered, confirming to your petitioner the title to the above-described tracts of land. And your petitioner will ever pray, &c.

JOHN LEE WILLIAMS,
Att'y for Petitioner.

A copy of the above petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for the same district; and the return of the said marshal thereon is in the words and figures following, to wit:

"Executed this 24th day of June, 1829, by leaving copy with Thos. Douglass.

ISRAEL SMITH,
Dep. Marshal."

And afterwards, to wit: on the sixteenth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglass, esquire, United States' attorney for the District of East Florida, brought and filed in the clerk's office aforesaid his answer to the said petition; which said answer is in the words and figures following, to wit:

SUPERIOR COURT, *November Term*, 1829.

THE UNITED STATES OF AMERICA,
ats.
EUSEBIO M. GOMEZ.

Answer of the U. S. Attorney.

The answer of Thomas Douglass, United States' attorney for the District of East Florida, to the petition or bill of complaint of Eusebio M. Gomez: The said attorney, in the name, and for and on behalf of the same United States, saving and reserving to them now, and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained, for answer thereunto, or unto so much thereof as it is material and necessary for them to answer unto, answereth and saith: that, whether any such grant of land was made or not by the said Governor Estrada to the said Eusebio M.

Gomez, on the said sixteenth day of July, in the year of our Lord one one thousand eight hundred and fifteen, or at any other time, for twelve thousand acres of land on Jupiter island, extending between Indian river and the sea, in front of the river St. Lucia, on account of the various services of the grantee in several civil and military capacities designated in the memorial in the said petition or bill of complaint mentioned, or whether the said Eusebio M. Gomez ever rendered any such services to the Spanish Government or not, this respondent has no knowledge, except what he has derived from a perusal of the said petition or bill of complaint, and of the memorial aforesaid, and cannot, therefore, either admit or deny the same; but respectfully prays this honorable court to require of the said Eusebio M. Gomez due proof of the making, execution, and delivery, to him of the said grant, and of the performance of the said services in the said memorial mentioned and enumerated, if any such grant of land was ever made, or any such services were performed, and of all the matters and things in the said petition or bill of complaint alleged and set forth, as they are therein stated, according to law and the usages of courts of equity.

And this respondent avers, that if any such grant of land was made by the said Governor Estrada to the said Eusebio M. Gomez, as is above mentioned and described, it was made contrary to, and in violation of the laws, ordinances, and royal regulations of the Government of Spain, which were in force in the said province of East Florida at the time when the said supposed grant is alleged to have been made, providing for the granting of lands in its province; of which said provinces, the said East Florida was then one, and without any power or authority on the part of the said Governor Estrada to make it, and that it was never approved by the said Government of Spain; and that it was, and is wholly null and void, as will more fully appear by reference to the laws, ordinances, and royal regulations aforesaid; all of which, this respondent prays leave to introduce and read on the hearing of this cause. And this respondent expressly denies, that any power or authority had been conferred upon the said Governor Estrada at the time when the said supposed grant is alleged to have been made, to make grants of land in East Florida of the magnitude and description of the now claimed and described by the said Eusebio M. Gomez in this suit. And this respondent further prays, that the said Eusebio M. Gomez may be required to show and prove to this honorable court, on the hearing of this cause, the specific powers which had been conferred, (if any such powers had been conferred,) by the Government of Spain aforesaid, upon the said Governor Estrada, to make grants of land in East Florida; and, particularly, that he may be required to show and prove the specific power under which he claimed to act in making the said supposed grant, if any such grant was ever made by him; and the said respondent suggests that, if the said Eusebio M. Gomez has any grant for the said tract of land, it was made since the twenty-fourth day of January, one thousand eight hundred and eighteen, and is consequently rendered entirely null and void by virtue of the provision contained in the latter clause of the eighth article of the treaty made and concluded on the 22d day of February, in the year one thousand eight hundred and nineteen, by and between the said Government of Spain and the said United States, as will more fully appear by reference to the said treaty, which this respondent prays leave to introduce and read on the hearing of this cause.

And this respondent further saith, that, at the time when the said supposed grant is alleged to have been made as aforesaid, it was, and for a long space of time had been, the fixed and settled policy of the Government of Spain to parcel out its colonial domain in reference solely to the objects of increasing the population of its provinces, and of benefiting its indigent subjects; and that, in accordance with that policy, grants of land for purposes of speculation were approved or tolerated by the said Government, and that said supposed grant was obtained by the said Eusebio M. Gomez, (if obtained at all,) for purposes of speculation only.

And this respondent further avers, that the said supposed grant of land was made to the said Eusebio M. Gomez in manner and form as is in said petition or bill of complaint alleged; and the said Governor Estrada had been invested by the said Government of Spain with competent power to make it, which is not admitted, the said Eusebio M. Gomez has, by a total failure and neglect to occupy, cultivate, or improve the said tract of land in any manner whatever, for a long space of time, to wit: for the space of fourteen years last past, wholly forfeited and lost all right and title, if any he ever had thereto.

And this respondent admits, that the said Eusebio M. Gomez did present his claim to the said tract of land to the board of land commissioners in his petition or bill of complaint mentioned; and avers that the said board of commissioners have rejected the said claim, as will more fully appear by reference to the report of the said board of land commissioners upon the said claim, a copy of which is hereunto annexed, and made a part of this answer, as exhibit A., and is taken from the 87th page of the report of the said board of commissioners for the year 1828.

And now, having fully answered all the matters and things in the said petition or bill of complaint contained, the said attorney prays that the said United States may be hereof discharged, and that their reasonable costs and charges by them in and about the defence of this suit by them paid, laid out, and expended, may be adjudged and decreed to them.

THOS. DOUGLASS,
United States' Attorney, &c.

EXHIBIT A,

Annexed to, and made a part of the foregoing answer, to wit:

"No. 4.

Eusebio M. Gomez, claimant 12,000 acres of land.

Exhibit annexed to answer of U. S. attorney.

Thomas de Aguilar, Secretary of Government, certifies that, on the 15th day of July, 1815, Eusebio Maria Gomez presented a memorial, praying for 12,000 acres of land for services and head-rights situated on the rivers Jupiter and St. Lucia, including the old English settlements on said rivers; to which Governor Estrada made the following decree on the 16th of the above month and year: "Let there be granted to the interested, on the terms which he indicates, the lands which he solicits in the place pointed out, without injury to a third person, as the services which he states are well known to this Government; and, that this gift may be known, let there be issued to him from the Secretary's office, the corresponding certificate."

We have always required the party to show some cause, however, for the loss of the original of Aguilar's certificate—this not attempted; and, independent of all other grounds of objection, on this alone we would reject this claim."

And afterwards, to wit, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and thirty, the said Eusebio M Gomez, by his said attorney, brought and filed in the clerk's office aforesaid his replication; which said replication is in the words and figures following, to wit:

EASTERN DISTRICT OF FLORIDA, } *to wit:*
Superior Court, county of St. Johns, }

Replication. The replication of Eusebio M. Gomez to the answer of Thomas Douglass, esq., attorney for the United States, defendant:

And this replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, insufficiencies, and uncertainties in the answer of the said defendant, for replication thereunto, says that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer thereto is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter and thing in the said answer contained, material or effectual to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall order and direct; and humbly prays, as in and by his said bill he hath already prayed, &c.

JOHN LEE WILLIAMS,
For Comp.

Document offered and received in evidence in this case on behalf of the said claimant; being the translation of a document made by the translator and interpreter of this court, from a copy of the original duly certified by the keeper of the public archives for East Florida, to wit:

TRANSLATION.

His Excellency THE GOVERNOR.

Memorial of Gomez to Span. Gov't. for grant. Don Eusebio M. Gomez, an inhabitant of this city, with due respect represents to your excellency, that, wishing to increase his means in some measure, with a view to procure his own support and that of his family, composed of his wife, five children, and four slaves; and in consideration that the Government of this province has always desired that the lands thereof be cultivated and inhabited, in conformity with the intention of the sovereign: Therefore, and in attention that your petitioner has, on many occasions, served his Majesty and this province, as he has been employed as the attending officer of the royal hospital of this place for more than one year, and for fifteen months as clerk in the department of the royal domain; that, on many occasions, he has brought, with a great risk of losing his vessel, pecuniary succors and implements of artillery from the Havana; that he has been one of the first who, in this place, presented themselves with enthusiasm to take arms against

the insurgents of this province, as it is proved to your excellency that the latter end of March, one thousand eight hundred and twelve, he brought and delivered in this place, as prisoner, the insurgent Broadway, taken by the detachment of cavalry in which your petitioner enlisted in order to repel a party of those disturbers of the peace who advanced in sight of the fort; and, finally, in attention of his deserving conduct and devotion to the tranquillity of his country, by which he merited the confidence of the Government, which, in consequence, in the most troublesome time of the said year eighteen hundred and twelve, confided to him the guard and watch over this city, by appointing him a ward commissary; and in consideration, moreover, that he is one of the oldest inhabitants, and a native of this province, and has not yet participated in any of the many bounties which the sovereign has, with a liberal hand, distributed not only to those of the same class with him, but also to those come to settle themselves in said province: Therefore, your petitioner supplicates your excellency be pleased to grant, him in absolute property, twelve thousand acres of land on the shores of Jupiter's island and of the river St. Lucy, including the old English settlement located on those shores; and he hopes to receive this favor from the benevolence and justice of your excellency. St. Augustine of Florida, on the fifteenth of July, one thousand eight hundred and fifteen.

EUSEBIO M. GOMEZ.

Grant to Gomez for 12,000 acres of land.

Decree.—St. Augustine, on the sixteenth of July, one thousand eight hundred and fifteen. The tract of land solicited by the petitioner is granted to him, without prejudice of a third party, in the terms which he indicates, and in the place which he designates, and in consideration that the services which he allegates are known by this Government; and, in testimony of this bounty, let the corresponding certificate thereof be issued to him from the secretary's office.

ESTRADA.

And afterwards, before the Superior Court for the Eastern District of Florida, holden at the court-house in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-two, to which term this cause had come by regular continuance, to wit, on Tuesday the eighth day of said term, and the fifteenth of said month, the following decree of confirmation was entered of record in this cause, to wit:

EUSEBIO M. GOMEZ, *against* THE UNITED STATES OF AMERICA. } *Land claim*, 12,000 *acres*.

Decree of confirmation.

Whereas, Eusebio M. Gomez did, in the pursuance of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved 23d day of May, 1828, on the 21st day of May, 1829, file his petition for the confirmation of certain lands therein mentioned, in the clerk's office of the Superior Court for the Eastern District of Florida; and whereas the attorney of the United States for this district did duly appear and answer said petition; and this cause coming on to be heard this day, the said claimant, by his counsel, offered in evidence a copy from the office of the keeper of the public archives, of the original grant on which this claim founded, to the received of which in evi-

dence, the attorney for the United States objected, alleging that the original grant *itself* should be produced, and its *execution* proved, before it could be admitted in evidence, and that the original only could be received in evidence—which objection was overruled by the court, and the copy from the office of the keeper of the public archives, certified according to law, was ordered to be received in evidence; and the court further ordered that, though by the express statute of this Territory, copies are to be received in evidence, yet in cases where either the claimants or the United States shall suggest that the *original* in the office of the keeper of the public archives is deemed necessary to be produced in court, on motion therefor, a subpœna will be issued, by order of the court, to the said keeper to appear and produce the said original in court for due examination there. And such proceedings being had herein, as that this claim was submitted to the court for its decree thereon; and the said court having examined the claim of the said petitioner, and the answer of the attorney of the United States, together with the evidence filed herein, and having maturely considered the same, doth order, adjudge, and decree, that this claim is valid, and that, in accordance with the laws and customs of Spain, and under and by virtue of the late "treaty of amity, settlement, and limits between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821, and under and by virtue of the laws of nations and of the United States, it is hereby confirmed, adjudged, and decreed unto the said claimant, to the extent, and agreeably to the boundaries as in the grant and the petition of the claimant for the same, filed herein, is set forth, to wit, "twelve thousand acres of land on the shores of Jupiter's island and of the river St. Lucy, including the old English settlement located on those shores."

And afterwards, before the Superior Court for the Eastern District of Florida holden at the court-house in the city of St. Augustine, at the term of October, in the year of our Lord one thousand eight hundred and thirty-two, to wit, on Friday the fifth day of said term, and the fifth of said month, the following appeal was entered of record in this cause, to wit:

EUSEBIO M. GOMEZ,
against
THE UNITED STATES OF AMERICA. } *Land claim*, 12,000 *acres.*

Appeal. This day came Thomas Douglass, esquire, attorney of the United States for this district, and moved the court that an appeal be granted in this case on behalf of the said United States, from the decree of this court to the Supreme Court of the United States; which is granted accordingly.

And afterwards, before the Superior Court for the Eastern District of Florida, holden at the court-house, in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-three, to wit, on Monday, the eighteenth day of said term, and the tenth day of June, the following entry of record was made in this cause, to wit:

THE UNITED STATES OF AMERICA,
ats.
EUSEBIO M. GOMEZ. } *Land claim*, 12,000 *acres.*

Revival of appeal. Now, on this day, came Thomas Douglass, esquire, United States' attorney for the District of East Florida, and suggests

to the court now here, that, since the granting of the appeal in the above cause to the Supreme Court of the United States, a term of said court has intervened, and that the record herein has not been sent up to the said court: wherefore, the said attorney, on behalf of the same United States, prays that said appeal may be revived, and the order therefor extended, and a copy of the record in said cause, duly certified, may be sent up to the said Supreme Court before the first day of the next term thereof, to be holden on the second Monday of January next; and that a citation, with notice of said appeal, may be forthwith issued by the clerk of this court to the appellee, and that the same may be served by the marshal of said district upon the said appellee, or his solicitor or agent, and returned to this court within thirty days from the issuing thereof: Which is ordered accordingly.

And afterwards, to wit, on the eleventh day of June, in the year 1833, a citation of appeal, in pursuance of the above order, was issued in this case; which citation, and the return of the marshal of this district thereon, is in the words and figures following, to wit:

Citation of appeal. In the name, and by the authority of the United States of America:

To Eusebio M. Gomez, or to his agent, attorney, or solicitor, greeting:

You are hereby cited and admonished that an appeal has been taken, on the part of the United States, from the decree of the Superior Court for East Florida, to the Supreme Court of the United States, in a certain claim to twelve thousand acres of land, wherein you, the said Eusebio M. Gomez, are claimant, and the said United States respondent; and that the record in said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court at the next term thereof, to be holden on the second Monday of January next.

Witness, the honorable Robert Raymond Reid, judge of our said Superior Court, at the court-house in the city of St. Augustine, this eleventh day of June, A. D. 1833.

[L. S.]

GEORGE GIBBS, *Clerk.*
Per K. B. GIBBS, *Dep. Clk.*

THOS. DOUGLASS, *U. S. Att'y for E. Florida.*
JOHN L. WILLIAMS, *Att'y for Claimant.*

"Executed by delivering a true copy to John L. Williams, esquire, attorney for the within named Eusebio M. Gomez, the said Gomez not being found in my district. June 20th, 1833."

SAMUEL BLAIR, *Marshal.*

SUPERIOR COURT, *District of East Florida,* } *to wit:*

I, George Gibbs, clerk of the said court for the district aforesaid, do hereby certify, that the foregoing eighteen pages, contain a full, true, and complete transcript of the record and proceedings had in the case therein named, in my charge.

In testimony wherof, I have hereto set my hand, at the city of St. Augustine, this fifth day of July, one thousand eight hundred and thirty-three.

GEO. GIBBS, *Clk.*

By the honorable Robert Raymond Reid, judge of the Superior Court for the District of East Florida:

To all to whom these presents shall come, be seen, or made known, greeting: Know ye, that George Gibbs, who hath signed the foregoing attestation, is clerk of the Superior Court for the District of East Florida; that all due faith and credit are, and ought to be given to his acts as such; and that the foregoing attestation is in due form of law.

In testimoney whereof, I have hereunto set my hand, and caused the seal of the said court to be hereunto affixed, this
[L. S.] fifth day of July, A. D. 1833, and of the independence of the United States of America the fifty-eighth.

ROB'T. RAYMOND REID.